



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING

SUMMARY DECISION

OAL DKT. NO. ADC 4217-11

AGENCY DKT. NO. SADC ID#1033

FRANK CIUFO,

Petitioner,

v.

SOMERSET COUNTY AGRICULTURE

DEVELOPMENT BOARD,

Respondent.

Christopher Stevenson, Esq., for petitioner (Norris, McLaughlin & Marcus,
attorneys)

John M. Lore, Esq., for respondent (DeMarco & Lore, attorneys)

Record Closed: April 26, 2011

Decided: May 29, 2012

BEFORE **JOHN F. RUSSO, JR., ALJ:**

STATEMENT OF THE CASE

Petitioner, Anthony Ciufo, (Ciufo) filed a motion to dismiss this matter alleging that respondent Somerset County Agriculture Development Board (SCADB) failed to follow the proper procedural requirements under the Right to Farm Act (Act) N.J.S.A.

4:1C-1 to -10.4 in connection with its determination that the storing of petitioner's commercial vehicles on petitioner's farm is not a protected activity under the Act.

PROCEDURAL HISTORY

On March 22, 2011, after a public hearing, respondent, the Somerset County Agriculture Development Board (SCADB), adopted a resolution ratifying its determination that the storing of commercial vehicles on Ciufu's farm is not a protected activity under the Right to Farm Act, N.J.S.A. 4:1C-1 to -10.4.¹, and forwarded the resolution to the appropriate parties. On March 17, 2011, at Ciufu's request, the SCADB forwarded the matter to the State Agriculture Development Committee for its review and determination. On April 1, 2011, the State Agriculture Development Committee transmitted the matter to the Office of Administrative Law (OAL) pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, as an appeal by Ciufu of the SCADB's determination. The matter was filed by OAL on April 13, 2011. On August 8, 2011, Ciufu filed a motion to dismiss the matter before the OAL alleging SCADB acted in contravention of the RTFA and its implementing regulations, which was opposed by respondent.

FACTUAL DISCUSSION

The following facts are undisputed and as such I **FIND** the following as fact:

1. The respondent, Somerset County Agriculture Development Board (SCADB), determined that the storing of commercial vehicles on petitioner Anthony Ciufu's (Ciufu) farm is not a protected activity under the Right to Farm Act, N.J.S.A. 4:1C-1 to -10.4.
2. According to SCADB, on October 19, 2010, "a written request with supporting documentation was submitted by Thomas Leach, Zoning Officer for the Township of Branchburg (Leach), for determination of a generally accepted Agricultural Management Practice on the Ciufu Farm." See SCADB Resolution.

¹ The parties incorrectly refer to respondent as the Somerset County Agricultural Development Board. The board is known as the Somerset County Agriculture Development Board. See <http://www.co.somerset.nj.us/scadb> and N.J.S.A. 4:1C-3 and N.J.A.C. 2:76-2.1.

3. SCADB considered the matter, which related Leach's concerns regarding Ciufio's storage of commercial vehicles on Ciufio's farm, under N.J.A.C. 2:76-2.3. Ibid; SCADB's July 5, 2011, Letter.
4. After Leach filed the matter with SCADB, it requested information from Ciufio about his farm and the use of commercial vehicles on the farm. SCADB Resolution.
5. After a hearing, SCADB determined that "the primary use of the commercial vehicles on the Ciufio Farm is for the landscaping business, 'Simple Cuts,' and therefore the jurisdiction in this matter is under the Township of Branchburg, and not the Somerset CADB, as this is not a Right-to-Farm matter, nor does it constitute an activity protected by the Right-to-Farm Act." Ibid.
6. On March 17, 2011, at Ciufio's request, SCADB forwarded the matter to the State Agriculture Development Committee for its review and determination. Ibid.
7. On March 22, 2011, SCADB adopted a resolution ratifying its determination and forwarded the resolution to the appropriate parties. Ibid.
8. On April 1, 2011, the State Agriculture Development Committee transmitted the matter to the Office of Administrative Law (OAL) pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, as an appeal by Ciufio of the SCADB's determination.

LEGAL ANALYSIS AND CONCLUSION

This matter arises from SCADB determination that the storing of commercial vehicles on petitioner Anthony Ciufio's (Ciufio) farm is not a protected activity under the Right to Farm Act, N.J.S.A. 4:1C-1 to -10.4. Ciufio filed a motion to dismiss this matter alleging that SCADB acted in contravention of the RTFA and its implementing regulations. I am treating this motion to dismiss as a motion for summary decision.

Under the Uniform Administrative Procedure Rules, a party may move for summary decision if:

the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth

specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

[N.J.A.C. 1:1-12.5(b)]

Prior to the establishment of the OAL, the New Jersey Supreme Court stated that “court-fashioned doctrines for the handling of litigation do in fact have some genuine utility and relevance in administrative proceedings.” Hackensack v. Winner, 82 N.J. 1, 29 (1980). The Court also determined that:

many principles and rules that govern judicial proceedings and determinations can be applied to an agency’s quasi-judicial or adjudicative function. Judicial rules of procedure and practice are transferable to administrative agencies when these are conducive to ensuring fairness, independence, integrity, and efficiency in administrative adjudications.

[Matter of Tenure Hearing of Onorevole, 103 N.J. 548, 554-55 (1986) (citation omitted)]

N.J.A.C. 1:1-12.5(b) is similar to, and may therefore be interpreted and applied as is the summary judgment rule under the New Jersey Rules of Court, which permits a party to move for summary judgment if:

the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

[R. 4:46-2(c)]

In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court summarized the court rule and stated that the issue is “whether the evidence presents a sufficient disagreement to require a [hearing] or whether it is so

one-sided that the party must prevail as a matter of law. Id. at 536, citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). Using this analysis, a contested case clearly can be summarily disposed of before an Administrative Law Judge without a plenary hearing in instances where the undisputed material facts, as developed on motion or otherwise, indicate that a particular disposition is required as a matter of law. In the Matter of Robros Recycling Corp., 226 N.J. Super. 343, 350 (App. Div. 1988).

According to SCADB, on October 19, 2010, “a written request with supporting documentation was submitted by Thomas Leach, Zoning Officer for the Township of Branchburg (Leach), for determination of a generally accepted Agricultural Management Practice on the Ciufu Farm.” See SCADB Resolution. Significantly, SCADB considered the matter after Leach filed it with SCADB, which related to the storage of commercial vehicles on Ciufu’s farm, under N.J.A.C. 2:76-2.3. Ibid; SCADB’s July 5, 2011, Letter.

SCADB requested from Ciufu information about his farm and the use of commercial vehicles on the farm. SCADB Resolution. After a hearing, SCADB determined that “the primary use of the commercial vehicles on the Ciufu Farm is for the landscaping business, ‘Simple Cuts,’ and therefore the jurisdiction in this matter is under the Township of Branchburg, and not the Somerset CADB, as this is not a Right-to-Farm matter, nor does it constitute an activity protected by the Right-to-Farm Act.” Ibid.

The Right to Farm Act, N.J.S.A. 4:1C-1 to -10.4 (RTFA), and the regulations promulgated thereunder, N.J.A.C. 2:76-2.1 to -2B.3, are designed to protect “commercial farm operations from nuisance action, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey.” N.J.S.A. 4:1C-2(e). To be eligible for the protections of the RTFA, a commercial farm must comply with agricultural management practices adopted by the State Agriculture Development Committee (SADC or committee), or with generally accepted agricultural operations or

practices as determined on a site-specific basis by a county agriculture development board (CADB or board).² N.J.S.A. 4:1C-9; N.J.A.C. 2:76-2.2; N.J.A.C. 2:76-2A.2 to -2A.11; N.J.A.C. 2:76-2.3; N.J.A.C. 2:76-2.4; N.J.A.C. 2:76-2.10. If the commercial farm also does not pose a direct threat to public health and safety, the operator of the farm “may perform various farming functions that may be considered annoying or a nuisance by other citizens.” N.J.S.A. 4:1C-9; Bor. of Closter v. Abram Demaree Homestead, Inc., 365 N.J. Super. 338, 346 (App. Div. 2004), certif. denied, Bor. of Closter v. Abram Demaree Homestead, Inc., 179 N.J. 372 (2004).

The RTFA and its regulations provide specific procedures for determining whether a commercial farm is protected by the act. N.J.S.A. 4:1C-10.1; N.J.A.C. 2:76-2.3; N.J.A.C. 2:76-10. First, “a commercial farm owner or operator that meets the eligibility criteria pursuant to N.J.S.A. 4:1C-9 may make a request in writing to the board to determine if his or her operation constitutes a generally accepted agricultural operation or practice” that is protected by the RTFA from nuisance action. N.J.A.C. 2:76-2.3 (emphasis added); see also N.J.A.C. 2:76-2.4. Under this procedure, the CADB requests information about the commercial farm, and the CADB, upon making a decision, forwards its determination to the farm owner, the SADC, and any other appropriate party. N.J.A.C. 2:76-2.3(b) to -(e). Any person aggrieved by the board’s determination may file an appeal with the SADC in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15 (APA), and the SADC’s decision shall be considered a final administrative agency decision. N.J.A.C. 2:76-2.3(f); N.J.S.A. 4:1C-10.2.

Second, the RTFA and its regulations provide for a separate procedure for resolving conflicts involving the operation of a commercial farm. Under this procedure, “[a]ny person aggrieved by the operation of a commercial farm shall first file a complaint in writing, with the applicable board or the Committee in counties where no board exists, prior to filing an action in court.” N.J.A.C. 2:76-2.10(a); N.J.S.A. 4:1C-10.1(a). If a board exists and the dispute concerns activities that are not addressed by an agricultural management practice or site-specific agricultural management practice, the

² The SADC has promulgated ten agricultural management practices. See N.J.A.C. 2:76-2A.2 to -2A.11.

board shall forward the complaint to the SADC requesting the SADC to determine whether the disputed operation constitutes a generally accepted operation or practice. N.J.A.C. 2:76-2.10(c); N.J.S.A. 4:1C-10.1(c). The SADC shall contact the commercial farm operator to provide evidence that his operation qualifies as a commercial farm, and if the SADC determines that the operation is a commercial farm, hold a public hearing in which testimony may be taken. N.J.A.C. 2:76-2.10(c)(2); N.J.S.A. 4:1C-10.1(c).

After a public hearing, the SADC shall issue its findings and recommendations to the CADB, the aggrieved party, the commercial farm operator and the municipality in which the farm is located. N.J.A.C. 2:76-2.10(c)(3). The SADC's report shall include a summary of the testimony and any supporting documents used by the SADC in reaching its decision. N.J.A.C. 2:76-2.10(c)(3)(i). Upon receiving the SADC's report, the CADB shall hold a public hearing and issue its findings and recommendations within 60 days of receipt of the SADC's decision. N.J.S.A. 4:1C-10.1(c). Any person aggrieved by the CADB's decision shall appeal the decision to the SADC within 10 days. N.J.S.A. 4:1C-10.1(d). On appeal, the SADC shall transmit the matter to the Office of Administrative Law pursuant to the APA. N.J.S.A. 4:1C-10.2. The SADC shall issue its final decision within 90 days of receipt of the petition for review. N.J.S.A. 4:1C-10.1(d). The decision of the SADC shall be binding, subject to the right of appeal to the Appellate Division. N.J.S.A. 4:1C-10.1(e).³

I am compelled to grant Ciufo's motion as I **CONCLUDE** that SCADB (and the SADC) did not follow the proper procedures. SCADB treated the matter as a request for a site specific agricultural management practice determination under N.J.A.C. 2:76-2.3. However, this matter should have been handled as a conflict resolution in accordance with N.J.A.C. 2:76-2.10(c). Firstly, requests under N.J.A.C. 2:76-2.3 may only be made by commercial farm owners or operators. Thus, Ciufo, a commercial farm owner, and not Leach, a municipal zoning officer, could have made a request for a

³ As discussed below, portions of N.J.A.C. 2:76-2.10(c) are not consistent with N.J.S.A. 4:1C-10.1 and N.J.S.A. 4:1C-10.2. However, this rule statement includes those portions of N.J.A.C. 2:76-2.10(c) that are consistent with the statute and followed by the SADC and various CADBs in prior decisions similar to this matter.

determination pursuant to N.J.A.C. 2:76-2.3. Ciufu did not make such a request. Leach was instead a person aggrieved by the operation of Ciufu's farm and, as such, had to file a complaint pursuant to N.J.A.C. 2:76-2.10. Second, the SCADB should have specifically treated the matter as a dispute under N.J.A.C. 2:76-2.10(c) because a county board exists in Somerset County and because there is no agricultural management practice that addresses the storage of commercial vehicles. Thus, by treating the matter as a request for a site specific agricultural management practice determination under N.J.A.C. 2:76-2.3, instead of a conflict resolution under N.J.A.C. 2:76-2.10(c), SCADB acted in contravention of the RTFA and violated Ciufu's rights.

The conclusion that this matter should have been adjudicated under N.J.A.C. 2:76-2.10(c), and not N.J.A.C. 2:76-2.3, is supported by several decisions by the SADC and various CADBs. For example, in Bohlin v. Brickyard, L.L.C., ADC 743-08, Initial Decision (September 29, 2009), adopted, Chairman (November 12, 2009) <<http://lawlibrary.rutgers.edu/oal/search.html>>, the Chairman of the SADC explained the difference between the procedures under N.J.A.C. 2:76-2.3 and N.J.A.C. 2:76-2.10(c). In Bohlin, Bohlin, an adjacent landowner to Brickyard, filed a complaint with the CADB under N.J.S.A. 4:1C-10.1 and N.J.A.C. 2:76-2.10(c) as a person aggrieved by activities performed by Brickyard. The CADB forwarded the matter to SADC because the activities at issue were not addressed by any adopted agricultural management practices. The SADC held hearings and found that some of the activities at issue were generally accepted practices, and that others were not. After the SADC issued its findings, the CADB held a hearing and partially affirmed the SADC's findings. Bohlin appealed the CADB's decision to the SADC, which transmitted the matter to the OAL. In affirming Judge Martone's decision to dismiss Bohlin's appeal of the matter to the SADC as untimely, the Chairman explained the important distinction between N.J.A.C. 2:76-2.3 and N.J.A.C. 2:76-10(c). According to the Chairman,

A right-to-farm dispute, or 'conflict resolution' case (N.J.A.C. 2:76-2.10), is to be distinguished from a site specific agricultural management practice determination issued by a [CADB] (N.J.A.C. 2:76-2.3). The latter involves an application filed with the CADB by an eligible commercial farm for a determination that certain activities conducted on

the farm are specifically permitted by the Act and/or are in compliance with agricultural management practices established in SADC rules.

Thus, the Chairman confirmed that the procedure under N.J.A.C. 2:76-2.3 is available only to commercial farm owners or operators.

Bohlin also reflects the proper procedure when an aggrieved person files a complaint against a commercial farm owner and there is no agricultural management practice that addresses an activity at issue. In Bohlin, the Chairman acknowledged that N.J.A.C. 2:76-2.10(c) does not conform with the RTFA:

The SADC recognizes that the MCADB's transmittal of the Bohlin complaint to the SADC, the agency's April-December 2006 hearings, and the referral of the SADC hearing report to the Board were in accordance with N.J.S.A. 4:1C-10.1(c) involving right-to-farm disputes concerning activities not addressed by an AMP, but that the procedural regulations at N.J.A.C. 2:76-2.10(c) governing non-AMP cases are inconsistent with the statute. The SADC intends to amend that regulation to conform to the statute.⁴

Thus, N.J.S.A. 4:1C-10.1 and N.J.S.A. 4:1C-10.2 controlled, and the portions of N.J.A.C. 2:76-2.10(c) consistent therewith informed, the proceedings in Bohlin. As such, the following occurred in Bohlin. Bohlin, an aggrieved person, filed a complaint with the CADB. The CADB, recognizing that the activities at issue were not addressed by an agricultural management practice, forwarded the matter to the SADC for a determination. The SADC held public hearings, concluded that Brickyard was a commercial farm, issued its findings that most of Brickyard's activities were protected by the RTFA, and sent the matter back to the CADB. The CADB held a public hearing and issued its own findings. Bohlin, albeit untimely, appealed the CADB's decision to the SADC, which transmitted the matter to the OAL. Finally, the SADC issued a final decision upon the issuance of Judge Martone's initial decision. This process reflects the procedures provided in N.J.S.A. 4:1C-10.1 and N.J.S.A. 4:1C-10.2 and certain

⁴ Two years later, the SADC has yet to amend N.J.A.C. 2:76-2.10(c) so that it complies with N.J.S.A. 4:1C-10.1 and N.J.S.A. 4:1C-10.2.

procedures provided in N.J.A.C. 2:76-2.10(c). These procedures were followed in other SADC and CADB decisions. See, e.g., In re Rickey & Son Farm, AGR 3319-00, Final Decision (July 27, 2000) <<http://lawlibrary.rutgers.edu/oal/search.html>>.

Here, unlike in Bohlin, the SCADB did not follow the appropriate procedure under the RTFA and its implementing regulations because the board erroneously treated the matter as a request by a commercial farm owner for a determination under N.J.A.C. 2:76-2. The matter should have been handled as a complaint by a person aggrieved by a commercial farm activity not addressed by an agricultural management practice under N.J.S.A. 4:1C-10.1(c) and N.J.A.C. 2:76-2.10(c). SCADB mistakenly framed the matter as a request “by Thomas Leach, Zoning Officer for the Township of Branchburg, for determination of generally accepted Agricultural Management Practice on the Ciufo Farm” and cited N.J.A.C. 2:76-2.3 as the applicable regulation. The problem with this is that Leach is not a commercial farm owner or operator. Thus, he was not entitled to make a request under N.J.A.C. 2:76-2.3.

Instead, SCADB should have treated the matter as a complaint by a person aggrieved by the operation of a commercial farm under N.J.A.C. 2:76-2.10(c) because Leach, an aggrieved person, took issue with the storing of commercial vehicles on Ciufo’s farm, a board exists in Somerset County, and there is no agricultural management practice that addresses that activity. As such, as in Bohlin, SCADB should have forwarded the matter to the SADC; the SADC should have held a public hearing, determined whether the storing of commercial vehicles on the farm is protected by the RTFA, and sent the matter back to the SCADB for a public hearing and determination; then, any person aggrieved by the SCADB’s decision could have appealed the decision to the SADC, which would have transmitted the matter to the OAL for an initial decision and then issued a final decision. These are the steps that should have, but were not, followed here. And since SCADB did not comply with statutory requirements, the matter is prematurely before the OAL and must be dismissed.

DECISION AND ORDER

I hereby **FILE** my initial decision with the **STATE AGRICULTURE DEVELOPMENT COMMITTEE** for consideration.

This recommended decision may be adopted, modified or rejected by the **STATE AGRICULTURE DEVELOPMENT COMMITTEE**, which by law is authorized to make a final decision in this matter. If the State Agriculture Development Committee does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE STATE AGRICULTURE DEVELOPMENT COMMITTEE, Health/Agriculture Building, PO Box 330, Trenton, New Jersey 08625-0330**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



May 29, 2012
DATE

JOHN F. RUSSO, JR., ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/bdt